IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Petition No.33464 of 2004
and
WPMP.Nos.40452/2004 & 2298/2007

G.Venugopal ... Petitioner

Vs.

1.The Director of School Education,
College Road, Nungambakkam,
Chennai-6.

2.The Chief Educational Officer,
Dharmapuri, Dharmapuri District.

3.The Senior Accountant General Officer,
Office of the Principal (Accounts & Entitlements),
Tamilnadu,
Annasalai,
Chennai-18.

4.The Headmaster,
Government Boys Higher Secondary School,
Uthangarai,
Dharmapuri District.

5.The Registrar,
Tamilnadu Administrative Tribunal,
Chennai. ... Respondents

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Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order in O.A.No.4041 of 2003, dated 31.3.2004 on the file of the Tamilnadu Administrative Tribunal, the 5th respondent herein, confirming the proceedings in Pen.10/2/V31-595/Rtd.2003-04-ADK/3, dated 23.9.2003 of the third respondent herein and confirming the order in Na.Ka.No.9/2003, dated 25.11.2003 of the 4th respondent herein and quash the same and to direct the 3rd respondent to sanction pension and other retiral benefits to the petitioner, as per the revised pension proposal sent by the 4th respondent vide his Lr.No.9/2003, dated 28.7.2003 taking into account of his last pay drawn.

For petitioner : Mr.R.Muthukannu
For R.1, R2 & R.4 : Mrs.Dakshayani Reddy, AGP
For R.3 : Mr.V.Vijaya Sankar,A.C.G.S.C.

O R D E R

ELIPE DHARMA RAO, J.

The petitioner is a retired B.T. Middle School Headmaster and he is challenging the proceedings issued by the respondents 3 and 4, ordering recovery of the alleged excess payments made to him, while he was in service, which was confirmed by the Tribunal.

2. The brief facts leading to the filing of this writ petition are that the petitioner was appointed as Elementary School Headmaster in the year 1966 and thereafter in the year 1979, i.e. after a period of 13 years, he was promoted to the post of B.T. Middle School Headmaster and since subsequently, the Middle School, where the petitioner was working, was upgraded as High School in the year 1989, he was absorbed as B.T. Assistant in the said High School from 1989 and retired as such on 31.5.2003. When proposals were sent regarding the payment of the retiral benefits to the petitioner, the third respondent, took an objection regarding the fixation of the pay of the petitioner as a Middle School Headmaster and directed to fix the pay of the petitioner in the time scale of Rs.1640-2900 instead of Rs.2000-3200 w.e.f. 7.7.1989 and Rs.6500-10500 instead of Rs.9100-14050. It is also ordered that the petitioner is eligible for Special Grade Scale of Pay of B.T. Assistant at Rs.8000-13500 only w.e.f. 7.11.1999 and that he is not eligible for bonus increment, observing that the petitioner has not completed ten years in special grade and 30 years in the same post. With such directions, the third respondent directed the fourth respondent to review the entire pay fixation from the date of absorption of the petitioner in the post of B.T. Assistant from the post of Headmaster, Middle School and to recover the excess pay and

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allowances paid to the petitioner. In compliance of the said directions of the third respondent, the fourth respondent, by his order dated 25.11.2003, has ordered recovery of a total sum of Rs.4,35,007/= from the terminal benefits of the petitioner, by re-fixing his pay. These orders were unsuccessfully challenged by the petitioner before the Tribunal, resulting in his landing before this Court, by way of this writ petition.

3. There is no dispute with regard to the fact that by the time the petitioner entered into service in the year 1966, the pay of the post of the Secondary Grade Teacher and the Headmaster of Elementary School is one and same and the post of Headmaster was not a promotive post, which was made so on and from 1.6.1988 by giving higher pay scale to the post of Elementary School Headmaster by G.O.Ms.No.1381, Education Department, dated 5.10.1990, after the implementation of the V Pay Commission Report. But, even prior to that, i.e. on 7.11.1979 itself, the petitioner was promoted to the post of B.T. Grade Middle School Headmaster in Mittapalli, Uthangarai Panchayat Union and since on and from 7.7.1989, the said School was upgraded as High School, the petitioner was absorbed as B.T.Assistant. Thus, the petitioner has worked as Elementary School Headmaster for a period of 13 years 5 months and as a B.T.Grade Middle School Headmaster for a period of 8 years and 8 months, in toto more than 22 years. As such, since as on 1.6.1988, he was holding the post of B.T. Grade Middle School Headmaster and had completed more than 20 years of Service as Elementary School Headmaster and Middle School Headmaster, he was awarded Special Grade Middle School Headmaster pay scale of Rs.2200-4000 from 1.6.1988 onwards by the Assistant Education Officer, Uthangarai in his proceedings in Na.Ka.No.1266/91, A1, in the month of December, 1991.

4. It is seen from the materials placed on record that while the petitioner was receiving the said pay scale of Special Grade Middle School, the third respondent raised an Audit Objection in his proceeding AG(AU) I ISC/IV/II/PRP/92-93 Case No.57/846, dated 20.10.1992, objecting the award of the Special Grade Middle School Headmaster pay scale in the pay scale of Rs.1640-2900.

5. According to the Government of Tamil Nadu Finance (PC) Department Lr.No.46818/PC II 90.I, dated 20.11.1990 and clarification of the Government in their Letter No.86313/PC II/91, dated 13.2.1992, the services rendered by Headmasters Secondary Grade in Selection Grade/Special Grade prior to 1.6.1988 to be reckoned for the purpose of awarding Selection Grade/Special Grade in the revised scale of pay of Headmaster (B.T.Grade) Middle School. Admittedly, as has already been stated supra, the petitioner was a Special Grade Middle School Headmaster on 1.6.1988 and hence, he is entitled for the benefits of the above letters of the Government. Accordingly, a suitable and fitting reply was given to the Audit Objection raised by the third respondent by the 4th respondent. It is pertinent to note that the said reply was accepted by

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the third respondent and allowed the said pay scale to the petitioner by their proceedings in AG(A) I/ISC IV/II/PRR/ Case No.157/92-93/1383, dated 31.12.1993, as follows:

> "Accepting your reply that the pay of Shri G.Venugopal, B.T.Asst. Government High School, Mittapalli had been regulated in the scale of pay admissible to Special Grade B.T. Asst. Post be Rs.2000-3200 w.e.f. 7.7.89, the para No.18 of Part-II B of the above mentioned Inspection Report is treated as settled."

Thus, having already accepted the reply sent by the 4th respondent for the audit objection raised by the third respondent and having treated the said objection as 'settled', the third respondent is again raking up the same issue, when the pension proposals were sent to them.

6. The fourth respondent has filed a counter affidavit before the Tribunal stating that since the Government in G.O.Ms.No.1178, dated 22.12.1993 and in Letter No.33627/Edn 4/97, dated 9.8.1999 had clearly stated that for movement to Selection/Special Grade in Headmaster Middle School post, the total service rendered in Headmaster Middle School post, prior to or after 1.10.1970 and the services of Secondary Grade Teachers who were acting as Headmaster Middle School on 2.10.1970, but reverted due to lack of seniority and got scale scale protection could not be counted and that the petitioner was not the Headmaster Middle School on 2.10.1970 and his total service as on 1.6.1988 in Headmaster Middle School post works out to 8 years 7 months and 24 days only and therefore, he was entitled only to ordinary grade scale of Headmaster Middle School on 1.6.1988 and the Special Grade Scale of Pay in Headmaster Middle School post awarded was not in order. We are unable to accept this explanation offered by the fourth respondent for the reason that even by the time, they treated the audit objection raised by them as 'settled' by their proceedings in AG(A) I/ISC IV/II/PRR/ Case No.157/92-93/1383, dated 31.12.1993, after accepting the reply given by the fourth respondent, the G.O.Ms.No.1178, dated 22.12.1993, which is now being relied upon by the third respondent was in vogue and in the considered opinion of this Court, the respondents are, therefore, restrained by the principles of constructive res-judicata, in revoking the already settled issue and ordering recovery from his terminal benefits.

7. It is also available on record that the Government in their letter No.769617/864, dated 15.6.1988, has ordered that the Middle School Headmaster absorbed to High School should be called as Middle School Headmaster and his pay to be protected in the category of Middle School Headmaster. Since he was awarded reduced pay scale after his absorption to the High School as B.T.Assistant, the petitioner filed O.A.No.1122 of 1996 before the Tribunal, praying to revert him back to his original unit and original cadre of Middle School Headmaster and the Tribunal, by the

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order dated 22.2.1996 has directed the respondents to consider the request of the applicant, based on which, his pay scale was revised and awarded Special Grade Middle School Headmaster Pay by the fourth respondent in his proceeding 234/97, dated 27.11.1997 and the Special Grade Middle School Headmaster Pay was extended to the petitioner till his retirement. Therefore, now the respondents cannot take a different stand and order the petitioner to pay back the alleged excess amounts received by him.

8. At this juncture, it is apt to make a mention that under similar circumstances, the Honourable Apex Court in BHAGWAN SHUKLA vs. UNION OF INDIA [(1994) 6 SCC 154] and SAHIB RAM vs. STATE OF HARYANA AND OTHERS (1995 Supp (1) SCC 18), has held that excess amounts paid to the employees due to wrong construction of relevant order by the authority concerned, without any misrepresentation by the employee, may not be recovered.

9. Since as has already been adverted to supra, the respondents are restrained by the principles of constructive res judicata by settling the issue now revoked, and that the pay of the petitioner was fixed by the fourth respondent pursuant to a direction by the Administrative Tribunal, it cannot be held to be an erroneous fixation. Further more, in STATE OF HARYANA AND OTHERS vs. RAMKUMAR AND OTHERS [(2002) 9 SCC 703], the Honourable Apex Court has held that 'the administrative orders cannot overturn a judicial order'.

10. The Tribunal, without considering the case in its proper perspective has dismissed the claim of the petitioner. Therefore, it has become incumbent on the part of this Court to cause its interference into such an erroneous conclusion arrived at by the Tribunal.

In the result, this writ petition is allowed, setting aside the order passed by the Tribunal. No costs. Consequently, WPMP.Nos.40452 of 2004 and 2298 of 2007 are closed. The respondents are directed to settle the remaining terminal benefits of the petitioner within six weeks from the date of receipt of a copy of this order.

Rao

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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4.The Headmaster,
Government Boys Higher Secondary School,
Uthangarai,
Dharmapuri District.

+1 cc to Mr.R.Muthukkannu, Advocate Sr.No.65560.

+1 cc to Mr.V.Vijay Shankar, A.C.G.S.C. Sr.No.65545.

+1 cc to The Government Pleader Sr.No.65345.

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